based, like all the rules of contract law, on the intention of the parties; and it is this which the courts should seek. Hence, if by defendant's agreement to deliver the grain "at" the warehouse it was the intention of the parties that it should be delivered "in" the building, and it was the further understanding that defendant's promise to put it there was in the nature of an absolute undertaking, the contingency which arose to prevent his performance should not relieve him. The prevailing opinion impliedly assumes, and probably correctly so, that the grain was to be placed "in" the warehouse, for it entirely ignores this consideration in construing the contract. The dissenting opinion, however, holds that when defendant took the grain to the warehouse he had done all that was required of him, and in support of this cites *Dockman* v. *Smith,* 21 Ky. (5 T. B. Mon.), 372, which holds that a covenant to deliver tobacco "at" a warehouse does not require the obligor to deliver it "in" the warehouse. But in *Halstead* v. *Woods,* 48 Ind. App. 127, where a note was made payable at a certain bank, it was held that it was payable "in" the bank. See 1 WORDS AND PHRASES, 595.

WILLS — EXECUTION — "PRESENCE OF TESTATRIX". — The attestation of the will in question took place in a room connected with the room in which the testatrix was by an archway about six feet wide. The testatrix could have seen the attaching of the signatures had she had her eyesight; but she was blind. The Missouri statute required attestation in "the presence of the testator". *Held,* that the statute was satisfied. The rule for a blind testator is the same as that which would be applied to him if he had sight. The purpose of the statute is that the testator may have knowledge that the witnesses have signed the instrument which he intends as his will. This protection is ordinarily afforded by observation—which a blind person cannot have. All the other senses are inadequate to avoid the possibility of substitution. The statute does not require more for a blind person than for a person who can see. Wade, J., dissenting. *Welch* v. *Kirby* (Circuit Ct. of App., 1918), 255 Fed. 451.

The court correctly states the purpose of the statute to be that the testator may have knowledge that the instrument signed is the one which he intends as his will. But sight is only one of the ways in which the testator may gain this knowledge. It is no doubt the best assurance. Nevertheless, even vision may not be entirely adequate in certain cases. The courts have set it down as the exclusive test merely because it happens to be the usual and the safest test. It is well established now that an attestation is in the presence of the testator if he could have seen the act even though he did not see it done because of some indifference or indisposition to take visual notice. *Re Snow,* 128 N. C. 100; *Hill* v. *Barge,* 12 Ala. 687. However, these courts seem to ignore the fact that this knowledge may be gained by means of senses other than sight. In *Cunningham* v. *Cunningham,* 80 Minn. 180, the testator could have seen if he had moved about two or three feet but the court held the attestation to have been made in his presence because it was "within the testator's voice; he knew what was being done". The court cited with approval the statement in *Cook* v. *Winchester,* 81 Mich. 581 that in the definition of

the phrase "in the presence * * * due regard must be had to the circumstances of each particular case. * * * If they sign within his hearing, knowledge, and understanding, and so near as not to be substantially away from him they are considered in his presence". The best expression of this view is found in *Aiken* v. *Weckerly,* 19 Mich. 482, where the court said that the testator must be "mentally observant of the specific act in progress." See also *In re Will of Hiram Allred,* 170 N. C. 153, L. R. A. 1916, C. 946; Ann. Cas. 1916 D, 788; *Riggs* v. *Riggs,* 135 Mass. 238. To say the least, the vision test is hardly consistent with itself. According to this test the statute is not satisfied if the testator could not move his head into the line of vision by reason of some infirmity; or could not see the act because his vision was obstructed by a curtain or the foot-board of his bed. *Gordon* v. *Gilmire,* 141 Ga. 347. Is not blindness as much an obstruction to the vision as a curtain or a board? Yet in one case the testator is afforded all the possible means of minimizing the possibility of fraud while in the other the testator is guaranteed only an imaginary safeguard. It would seem that the dissenting view attains more completely the "rational, practical construction" which the prevailing view asserts as the ideal. The principal case is supported by the case of *Piercy's Goods,* 1 Rob. Eccl. R. 278.

WILLS—REVOCATION—ADOPTIVE CHILD—"ISSUE."—The testator adopted a child in compliance with the provisions of the statute. He had no children by his first wife and remarried after the adoption. He then made his will. After his death a posthumous child of the second marriage was born. A section of the statute of wills read as follows: "That every last will and testament made when the testator had no issue living, wherein any issue he might have is not provided for or mentioned, if at the time of his death he leave a child, or children, or issue, or leave his wife enceinte of a child or children which shall be born, such will shall be void, and such testator be deemed to die intestate." The will was objected to in a caveat filed really on behalf of the adopted child. *Held,* that the will was void, having been revoked by force of the statute. The adopted child was not an "issue" within the meaning of the statute of wills, hence there was no living issue at the time of the making of the will. When the section of the statute of wills above mentioned was enacted there was no adoption statute and consequently adopted children could not have been intended to be included. Moreover, the adoption statute did not clothe the adopted child with all the legal incidents of a child born in lawful wedlock. *In re Book's Will,* 105 Atl. 878, (Prerog. Ct. of N. J., Nov., 1918).

When adoption by statute first came into practice the legislatures hesitated to endow the child with all the legal incidents of a natural born child. The attitude of the legislatures was restrictive hence the interpretation of the courts was also restrictive. To-day adoption is the common thing and that feeling of reluctance to put the adopted child on the same plane with the natural child is no longer present in the minds of the legislatures. But unfortunately the courts are one step behind the legislatures, as is often the case, and the restrictive interpretation still continues. It is only when the